



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Olsen Environmental Services, Inc.

**File:** B-241475

**Date:** February 6, 1991

Charles W. Ormsby, Jr., Esq., Semanoff and Hendler, for the protester.  
Sophia L. Rafatjah, Esq., and Herbert F. Kelley, Jr., Esq., Department of the Army, for the agency.  
James Vickers, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest against dissolution of an emerging small business set-aside and the award of the requirement to a large business is denied where the contracting officer had rational basis for determination that the price submitted by eligible emerging small business was unreasonably high.
2. In considering price reasonableness under a small business set-aside, contracting officer has discretion in deciding which factors to consider and a price submitted by an otherwise ineligible large business properly may be considered.

### DECISION

Olsen Environmental Services, Inc. protests the award of a contract to Northeast Disposal, Inc. under request for quotations (RFQ) No. DAKF27-90-T-5156, issued by the United States Army Reserve Center, Philadelphia, Pennsylvania. Olsen contends that the RFQ, which was set aside for emerging small business,<sup>1/</sup> was improperly canceled and award made to a large business.

<sup>1/</sup> "Emerging small business" means a small business concern whose size is no greater than 50 percent of the normal size standard applicable to the standard industrial classification code assigned to a contracting opportunity. Federal Acquisition Regulation § 19.1002.

The RFQ was for collection and disposal of an estimated annual amount of 2,496 cubic yards of solid waste. The following three quotations were received:

	<u>Price</u>	<u>Size Status</u>
Northeast	\$ 4,740	Large
Olsen	\$14,976	Emerging Small
Eastern Waste Removal	\$17,448	Large

The government estimate was \$4,725 and the prior year contract price (Northeast was the incumbent) was \$4,740. After reviewing the quotes, the contracting officer dissolved the emerging small business set-aside because the only eligible quote received was unreasonable as to price. Award was made to Northeast.

Olsen contends that the contracting officer acted improperly in canceling the set-aside by comparing Olsen's quote with that of a large business and that the agency has not demonstrated that Olsen's quote is unreasonable. Also, the protester says that Northeast's quote may have been so much lower because it knew that the estimate contained in the RFQ was inaccurate and in fact "only a fraction of that amount" of solid waste will be generated.

Under the regulations, the agency may cancel an emerging small business set-aside if either there are no quotes received from emerging small businesses or the quotes received from such firms are not at reasonable prices. Department of Defense Federal Acquisition Regulation Supplement § 219.1070-2(b). Here, the agency's determination to cancel the emerging small business set-aside was based on the fact that only one emerging small business responded and that firm's price, in the agency's view, was unreasonably high.

A determination of price reasonableness for a small business set-aside is within the discretion of the procuring agency, and we will not disturb such a determination unless it is clearly unreasonable or there is fraud or bad faith on the part of contracting officials. Flagg Integrated Sys. Technology, B-214153, Aug. 24, 1984, 84-2 CPD ¶ 221. In making the determination, the contracting officer may consider such factors as the government estimate, the procurement history for the supplies or services in question, current market conditions, and a "courtesy bid" of an otherwise ineligible large business firm. Id. A small business firm's price is not unreasonable merely because it is greater than the price of an ineligible large firm, since there is a range over and above the price submitted by the large business that may be considered reasonable in a set-aside situation. The determination of whether a particular small business price

premium is unreasonable depends upon the circumstances of each case. Vitronics, Inc., 69 Comp. Gen. 170 (1990), 90-1 CPD ¶ 57.


Here, Olsen's quote was more than \$10,000 higher than the government estimate and the prior year's contract price. It was also \$10,000 more than Northeast's quote. The Army states that it used the government estimate and prior year's price to determine price reasonableness. Under the circumstances, where Olsen's quote was more than 300 percent higher than the estimate and the quote of a large business offeror, our view would generally be that the contracting officer's determination that the emerging small business' quote was unreasonable was proper. See American Imaging Serv., B-238969; B-238971, July 19, 1990, 69 Comp. Gen. \_\_\_, 90-2 CPD ¶ 51.

Nevertheless, in this case Olsen also argues that Northeast, as the incumbent, must have known that the reserve center would not generate the quantity of refuse estimated in the solicitation and therefore was able to quote such a low price. In this regard, the protester states it is simply impossible for Northeast to perform at the price offered. The agency on the other hand has stated that the estimated quantity of refuse set forth in the RFQ is the same as has been used for the 3 prior fiscal year contracts and is based on estimates used for similar size reserve centers.

Where estimates are provided in a solicitation, they must be based on the best information available and present a reasonably accurate representation of the agency's anticipated actual needs. DSP, Inc., B-220062, Jan. 15, 1986, 86-1 CPD ¶ 43. While the protester insists that the estimate is inaccurate, it has not established any basis for its position other than the fact that Northeast's quote is much lower than the others received. On the record here, this does not provide us with a legal basis upon which to disturb the agency's estimate. As far as Olsen's argument that Northeast may have submitted a "loss" price under the RFQ is concerned, we find that to be unlikely since the price offered was similar to its price under its prior contract for the same services. In any event, it has received the current award at this price and we have no legal basis to object to the firm's performance on a below-cost basis. Williamson County Ambulance Serv., B-239017, June 22, 1990, 90-1 CPD ¶ 583.

Since we have no basis to question the estimate, we similarly have no grounds upon which to disturb the agency's decision to terminate the set-aside because of its view that Olsen's price was unreasonably high.

The protest is denied.

  
for  
James F. Hinchman  
General Counsel